

MAY 23, 1984

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: DOWNTOWN WATERFRONT FANEUIL HALL PROJECT MASS R-77
LEASE COMMENCEMENT AGREEMENT FOR ROWES/FOSTERS WHARF

In its vote of May 25, 1983 tentatively designating Rowes Wharf Company as redeveloper of Rowes/Fosters Wharf, the Authority authorized the Director to execute a Lease Commencement Agreement for such site incorporating the terms of such designation. That authority was confirmed by the Authority's vote of November 17, 1983 which amended certain of the provisions of the tentative designation. Negotiations between the Authority and Rowes Wharf Limited Partnership have now been concluded on such Lease Commencement Agreement. Because the Lease Commencement Agreement has dealt comprehensively with certain issues not contemplated by the Authority's prior votes relating to such Lease Commencement Agreement, the Authority is being asked to confirm the authority of the Director to execute such Lease Commencement Agreement.

The Lease Commencement Agreement presented to the Authority treats the following subjects in addition to those contemplated by the prior votes of the Board:

1. A structure for the sale and lease of portions of the project has been agreed upon in anticipation of the lease for the site in amplification of the contemplated condominium referenced in the Board's vote of November 17, 1983;
2. The Lease Commencement Agreement responds to the litigation which has arisen relating to Parcel 3T(b), providing for alternative strategies for delay or redesign in response to such issue and providing for related economic adjustments. The rent start date remains November 15, 1984;
3. The schedule for the submission of design materials and the subsequent start of construction has been more fully integrated with the complex series of environmental reviews and permits which this project requires.

An appropriate vote confirming the authority of the Director to execute the Lease Commencement Agreement is attached.

VOTED: That the Director of the Authority be and hereby is authorized to execute and deliver on behalf of the Boston Redevelopment Authority a Lease Commencement Agreement with Rowes Wharf Limited Partnership for the Rowes/Fosters Wharf site in substantially the form presented to and incorporated in the minutes of this meeting.

5/22/84 Tue 9:06

This Lease Commencement Agreement (the "Agreement") is made this _____ day of _____, 1984, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and Rowes Wharf Limited Partnership, a Massachusetts limited partnership ("Associates"), of which Norman B. Leventhal, Edwin N. Sidman and Alan M. Leventhal are General Partners.

WITNESSETH

Reference is made to the following facts:

A. Pursuant to a resolution adopted on May 25, 1983, as amended by vote adopted on November 16, 1983, the BRA tentatively designated Associates as redeveloper of property known as Rowes/Fosters Wharf (the "Site", as more particularly described in Exhibit A attached hereto and made a part hereof) in the Downtown Waterfront Faneuil Hall Urban Renewal Area in the City of Boston. Pursuant to the terms hereof and the terms of the Lease (as hereinafter defined) there will be designed, developed and maintained buildings and other improvements (the "Improvements") upon the Site.

B. The tentative designation by the BRA is subject to Associates' execution of a lease commencement agreement embodying requirements and pre-conditions for final designation, which final designation shall be simultaneous with the effective date (the "Lease Commencement Date") of a long-term ground lease of the Site (the "Lease") from the BRA to Associates. This Agreement is the lease commencement agreement to which the tentative designation refers.

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. All actions of Associates and the BRA hereunder shall be subject to and in conformity with the following materials (the "Transaction Documents") which are incorporated herein and made a part hereof and as to which this Agreement shall be supplementary except where a specific conflict exists, in which case this Agreement shall prevail. Associates shall at all times proceed in accordance with the Transaction Documents and this Agreement. The Transaction Documents supersede all other documents or correspondence with respect to this redevelopment prior to the date hereof and consist of:

- a. Resolution of the BRA adopted May 25, 1983, entitled "Resolution of the Boston Redevelopment Authority Re: Tentative Designation of Redeveloper Rowes/Fosters Wharf In the Waterfront Urban Renewal Area Project No. Mass. R-77". This is attached hereto as Exhibit B.
- b. Document entitled "Rowes/Fosters Wharf Lease Commencement Agreement Summary". This is attached hereto as Exhibit C.
- c. Vote of the BRA adopted November 16, 1983, to which are attached:
 - i. Document of four pages dated November 16, 1983 entitled "Additional Terms and Conditions for Rowes/Fosters Wharf, Amending the Resolution Adopted by the Authority on May 25, 1983".
 - ii. Letter dated October 25, 1983 from Edwin N. Sidman of The Beacon Companies to Robert J. Ryan, Director.
 - iii. Document dated October 25, 1983 and entitled "Rowes Wharf Attachment 1: Summary of Program Refinements".

The vote of November 16, 1983 and its said attachments are collectively attached hereto as Exhibit D.

2. Associates agrees to perform all its obligations under this Agreement and to satisfy all conditions precedent to execution of the Lease established in this Agreement. The BRA, upon determining that Associates has so performed and satisfied such conditions precedent, shall make a final designation of Associates as redeveloper of the Site in accordance with its usual procedures. Simultaneously therewith, if Associates shall not then be in default of any of its obligations hereunder, Associates and the BRA shall execute the Lease and the date of execution shall be the "Lease Commencement Date." Whether or not such final designation has then been made or the Lease then executed, except as otherwise provided in Section 6 hereof, Associates shall commence the payment of rent as specified in the Transaction Documents on November 15, 1984.

3. Forthwith after the execution of this Agreement the parties shall enter into negotiations intended to result in the document which is to become the Lease. The terms thereof shall

be consistent with the terms and provisions of the Transaction Documents and this Agreement. The terms and provisions of the Lease shall be as similar as possible in the circumstances to those contained in that certain ground lease executed by the Authority effective on September 29, 1983 with Marketplace Center Associates for a parcel of land known as Parcel D-10 at the corner of Commercial Street and State Street, Boston, except that appropriate modifications shall be made to reflect business or other terms unique to this transaction. Without limitation, the Lease shall contain provisions setting out the special arrangements reflected on Exhibit D-1 attached hereto, but the final terms of such special arrangements may vary in some respects from those appearing in Exhibit D-1. In all events, the parties agree to conclude negotiations and have the final version of the Lease agreed to by November 1, 1984.

4. It is the intention of the parties that prior to the Lease Commencement Date, and as a condition precedent to final designation by the BRA as referred to in Paragraph 2 hereof, Associates shall prepare for the redevelopment of the Site in accordance with the procedures and the schedules set forth in this Agreement, and in general conformity with the Transaction Documents.

5. The sole obligations of the BRA hereunder shall be timely to perform its duties with respect to approvals required hereunder of the BRA, with respect to final designation, with respect to negotiation and execution of the Lease, with respect to the delivery of title to the Site as specified in Section 6 and to cooperate fully with Associates in efforts to obtain other approvals from the BRA, the City of Boston and other governmental authorities. The BRA does not guaranty the issuance of any such approvals. Consistent therewith, except as otherwise provided in Section 6, the Site is to be delivered on the Lease Commencement Date in its then condition, "as is", it being agreed that, during the period of this Agreement, Associates will have opportunity to examine the same in all respects (including subsurface conditions and utilities). The BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligations to do any work on or with respect to the Site, or the condition thereof.

6. On the earlier to occur of October 1, 1984 or the Final Designation Date, as hereinafter defined, the BRA shall possess and thereafter maintain and shall demise and convey to Associates good and clear record and marketable title to the Site, free from

all liens and encumbrances and free of all tenants and occupants, subject only to the following permitted exceptions:

- a. Rights of the public in Belcher's Lane (provided, however, that the fee thereto shall be in the BRA);
- b. Sewer line lying within the layout of Belcher's Lane;
- c. Rights of the Commonwealth of Massachusetts or the people of the Commonwealth of Massachusetts for fishing, fowling and navigation in and to those portions of the Site lying seaward of the primitive high waterline, as those rights are affected by Chapter 704 of the Acts of 1983;
- d. Terms and provisions of the Downtown/Waterfront/Faneuil Hall Urban Renewal Plan, as amended, recorded with Suffolk Registry of Deeds at Book 7948, Page 527;
- e. Terms and provisions of a Cooperation Agreement dated March 1, 1982 by and between the BRA and Bain & Company, recorded with Suffolk Registry of Deeds at Book 9954, Page 42.
- f. Laws of the Commonwealth of Massachusetts with respect to the construction of and maintenance of fill and structures in tidewaters and any licenses, heretofore or hereafter granted in accordance therewith, including, without limitation, the licenses enumerated on Exhibit I attached hereto.

With respect to the exceptions enumerated in subparagraphs a and b above, the BRA shall cooperate fully in any applications or proceedings made or engaged in by Associates to or with government agencies, in its name or in the name of the BRA, to eliminate such exceptions.

Without limiting the generality of the foregoing, Associates shall have no obligation to pay relocation assistance to any licensee, tenant or occupant of the Site whose rights are terminated by the BRA in order to deliver title to the Site in compliance with this Paragraph 6.

The obligation of the BRA to possess and demise to Associates title to and possession of the Site free of all tenants and occupants shall not negate the obligation of Associates set forth in the Transaction Documents, and hereby expressly confirmed, to

provide access and space to allow the passenger ferry use now conducted on the Site to continue during the construction period. Associates may discharge such obligations by making available space off of the Site but in the general vicinity of the Site for the conduct of such use during the construction period.

If for any reason, including, without limitation, the existence of any rights of others in the portion of the Site described as Parcel 3T(b) in that certain Land Disposition Agreement dated July 17, 1969, by and between the BRA and Boston Waterfront Associates I (the "3T(b) Issue"), the status of title to the Site does not conform to the provisions of this Paragraph 6 on the first to occur of October 1, 1984 or the date of final designation of Associates as Redeveloper of the Site (the "Final Designation Date"), Associates shall have the following additional rights:

- a. Subject to the conditions set forth in subparagraph b. below, to elect by written notice to the BRA to suspend further production of Design Materials and all dates for performance related thereto until the first to occur of
 - i. such date as the BRA has caused the status of title to the Site to conform to the requirements of this Paragraph 6;
 - ii. the date of a final adjudication, beyond appeal, adverse to the ability of the BRA to remove the 3T(b) Issue; or
 - iii. March 15, 1985 (such first occurring date being hereinafter referred to as the "Cut-Off Date").

For the period from November 15, 1984 through the Cut-Off Date, fifty percent of the rent to be paid by Associates to the BRA pursuant to the Transaction Documents shall abate.

If on the Cut-Off Date the 3T(b) Issue shall have been cured, Associates shall resume preparation of Design Materials and the carrying out of its obligations hereunder. For the purpose of applying the provisions of Paragraph 7 through 11 hereof, the interval between the date of election by Associates to suspend performance and the Cut-Off Date shall be ignored.

- b. Reference is made to a civil action pending in the Superior Court Department of the Trial Court as Docket

No. 67163, being the case of First City Developments Corp. of Boston - Harbor Towers I v. Boston Redevelopment Authority (the "3T(b) Suit"), into which 3T(b) Suit Associates has moved to intervene. If on the first to occur of October 1, 1984 or the Final Designation Date any of the following shall be descriptive of the litigation posture of the 3T(b) Suit, Associates may make the election described in subparagraph a. above:

- i. Associates or the BRA has moved for summary judgment in favor of the BRA and against the claim of First City Developments Corp. of Boston - Harbor Towers I ("First City") in said Parcel 3T(b) and a date has been set for argument thereon, which date is earlier than March 15, 1985;
 - ii. A date for trial of the 3T(b) Suit has been set, which date is on or before March 15, 1985;
 - iii. The Trial Court has rendered a judgment in favor of the BRA and against the claim of First City in said Parcel 3T(b), which judgment has been appealed by First City to an appellate court, and in accordance with Mass. Rules of Appellate Procedure, all briefs will be filed in such appeal by March 15, 1985.
- c. If on the Cut-Off Date the 3T(b) Issue shall not have been cured, the Site as herein described shall be reduced by the exclusion therefrom of said Parcel 3T(b) (the "Reduced Site"). Associates shall proceed to complete Design Materials for, and shall thereafter execute the Lease with respect to, such portions of the Improvements as are to be located within the Reduced Site and such portions of the Improvements as can, in the reasonable judgment of Associates, be redesigned to fall within the Reduced Site while retaining the economic and architectural integrity of the portions so redesigned (the "Reduced Improvements"). Based upon the Schematic Design for the Improvements approved by the BRA as recited in Paragraph 7 hereof, the parties agree that such Reduced Improvements would:
- i. exclude the building shown therein as the "North Wharf building,"

- ii. further require the partial redesign of the so-called Atlantic Avenue building so as either to exclude therefrom a portion of the northeast corner of above grade structure or to relocate such portions,
- iii. require the exclusion of portions of the subsurface areas of such Atlantic Avenue building, and
- iv. require the redesign of the vehicular circulation system of the garage portion of the Improvements.

In such event

- i. The economic provisions of the Transaction Documents, as amended by this Agreement, for the payment of rent and purchase price shall be adjusted pro rata between the Reduced Improvements and the total Improvements based upon program areas and the rental rates and purchase prices therefor; and
 - ii. Such Cut-Off Date shall, for the purpose of applying the provisions of Paragraphs 7 through 11 hereof, be deemed to be the date of this Agreement.
- d. Notwithstanding the absence of a final adjudication with respect to the 3T(b) Issue or the failure to otherwise cure such 3T(b) Issue, at any time after October 1, 1984 but prior to the Cut-Off Date (including during any period of suspension elected pursuant to Subparagraph 6a above), Associates may proceed with respect to the Reduced Site and the development thereon of the Reduced Improvements as provided in Subparagraph 6c. hereof.

In such event

- i. The economic provisions of the Transaction Documents, as amended by this Agreement, for the payment of rent and purchase price shall be adjusted pro rata between the Reduced Improvements and the total Improvements based upon program areas and the rental rates and purchase prices therefor; and
- ii. the date of such election shall for the purpose of applying the provisions of Paragraphs 7 through 11 hereof, be deemed to be the date of this Agreement;

- e. If Associates shall have proceeded with respect to the Reduced Site and the development thereon of the Reduced Improvements, Associates shall retain the right and continue to be obligated to construct the portion of the Improvements deferred at such time as the 3T(b) Issue shall have been cured; provided, however, that such obligation shall cease if the 3T(b) Issue shall not have been cured on or before November 15, 1987 and such right shall cease if commencement of construction of such portions of the Improvements shall not have commenced on or before November 15, 1989. Associates shall commence construction of such deferred portion of the Improvements within twelve (12) months following the date of such cure; provided, however, that Associates may delay the commencement of construction of such portion of the Improvements, but not beyond November 15, 1989, upon payment to the BRA of a monthly amount equal to fifty percent (50%) of the monthly rent which would have then been payable to the BRA pursuant to the Transaction Documents with respect to the program for the North Wharf building as shown in the approved Schematic Design for each month of such delay, commencing on the first day of the thirteenth month following the date of cure of the 3T(b) Issue.
- f. The provisions hereof providing for additional rights of Associates in the event that the status of title to the Site does not conform to the requirements of this Paragraph 6 on the earlier of October 1, 1984 or Final Designation Date shall not operate to relieve the BRA from the obligation, hereby expressly undertaken, to use its best efforts to remove any defect in the status of title to the Site, including, without limitation, the exercise of the power of eminent domain; provided, however, that the BRA's obligation to exercise the power of eminent domain with respect to the Parcel 3T(b) Issue shall be subject to the provisions of this subparagraph 6f.

The BRA shall not be obligated to cure such 3T(b) Issue by the exercise of the power of eminent domain unless Associates shall have given to the BRA an indemnity, in form satisfactory to the BRA, pursuant to which Associates agrees to reimburse the BRA the amount of any damage award that the BRA shall become obligated to pay to any persons whose rights in Parcel 3T(b) are so taken

in excess of the Base Amount, as hereinafter defined. Associates may give or withhold such indemnity in its sole discretion and may condition its willingness to provide such indemnity to the BRA upon the BRA's agreement to delay the exercise of such eminent domain power or to pursue the exercise of such power in accordance with the provision of M.G.L. Chapter 80A.

As used herein the phrase "Base Amount" shall mean such amount as the BRA shall borrow over a 40-year term, which amount, together with interest thereon, can be fully amortized and repaid by the dedication thereto of an amount equal to the rent which would have been payable to the BRA pursuant to the Transaction Documents with respect to the program for the North Wharf building as shown in the approved Schematic Design (the "North Wharf Rent"). If the BRA shall have the authority to borrow the Base Amount by the issuance of tax exempt obligations of the BRA, the BRA hereby commits to borrow the Base Amount by the issuance of such obligations and, in such event, the Base Amount shall mean the amount actually borrowed by the BRA through the issuance of 40-year tax exempt obligations to be repaid as aforesaid by the application of the North Wharf Rent. If the BRA shall not then have the legal ability to issue such tax exempt obligations, Associates shall loan the Base Amount to the BRA (the "Damages Loan"), such Damages Loan to bear interest on the principal balance outstanding from time to time at an annual rate of interest equal to the prime or base rate announced from time to time by the Bank of Boston, N.A. For the purpose of calculating the Base Amount and the initial principal balance of such Damages Loan, the parties shall assume a constant prime rate at twelve percent (12%) over the 40-year term of such loan.

Payments of interest on the Damages Loan and repayment of the principal amount thereof shall be made by application and set-off thereto by Associates of (x) the North Wharf Rent at such times and in such amounts as the same would have become due pursuant to the Transaction Documents and the Lease, (y) by the application and set-off thereto of payments of principal of and interest on any purchase money mortgage granted to the BRA in accordance with the Transaction Documents with respect to the North Wharf building and the program therein, at such times and in such amounts as the same become due pursuant to any such

mortgage, and (z) by the application and set-off thereto of any participation by the BRA in the proceeds of sale of units in the Residential Condominium located within the North Wharf building, all such payments to be applied first to accrued interest on the Damages Loan and then to principal until the same is paid in full.

- g. Nothing herein contained shall be construed as an agreement by the BRA to transfer, convey or assign to Associates any rights or interest, including without limitation, rights or interest of any third party, if any, in and to Parcel 3T(b), of which the BRA does not now have the right to dispose, or of which it shall not hereinafter lawfully obtain the right to dispose, whether by purchase, by exercise of the power of eminent domain, by the operation of any judgment or order of a court of competent jurisdiction, or otherwise. Nothing in the preceding sentence shall be deemed as a release or excuse from performance of the BRA from any of its obligations hereunder, including, without limitation, the obligation to convey a good and sufficient title to the premises in accordance with this Paragraph 6.

- 7. a. The Design Review Procedure attached to this Agreement as Exhibit E sets forth the formal stages of submissions and approvals of the Schematic Design, the Design Development, the Contract Documents, and Construction Inspection all as defined in said Exhibit E (collectively, the "Design Materials") for the Improvements to be constructed and installed by Associates in the redevelopment of the Site. In the event that any provision of the Design Review Procedure shall be inconsistent with any other provision of this Agreement, then this Agreement shall prevail over such inconsistent provision; otherwise, the Design Review Procedure shall be treated as supplemental to this Agreement. The scope of review by the BRA of Design Materials submitted in accordance with this Paragraph 7 and the Design Review Procedure shall not extend to the design or layout of interior spaces not visible by the general public, nor to structural, electrical, mechanical or plumbing designs except to the extent that the selection of any structural, electrical, mechanical or plumbing system impacts the design of exterior elements of the Improvements.

- b. The BRA hereby acknowledges its receipt of the Schematic Design for the Improvements, dated March 2, 1984 and approves the same subject to the limitations set forth in the BRA's letter to Associates dated May 7, 1984. Such Schematic Design fulfills all requirements established therefor by the Design Review Procedure. The Improvements referred to in this Agreement are the buildings and site improvements shown in such Schematic Design and the program of uses and allocation of areas among such uses described in such Schematic Design, as the same may subsequently be refined in accordance with the Design Review Procedure. Such program of uses and allocation of areas among such uses is as set forth on Exhibit F attached hereto.
- c. Within one hundred twenty (120) days after the date hereof Associates shall submit to the BRA the Design Development for the Improvements (as described in the Design Review Procedure). The BRA shall review the Design Development for conformity with the approved Schematic Design and this Agreement and shall, within ten (10) days after receipt thereof, either approve the Design Development or notify Associates in writing of disapproval, specifying the respects in which the Design Development is disapproved.

In the event of a disapproval, Associates shall, within thirty (30) days after Associates receives the written notice of such disapproval, resubmit the Design Development altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the BRA; provided, however, if Associates shall have resubmitted such Design Development to the BRA, altered from the prior submission in response to the BRA's grounds for prior disapproval, and the same shall again be disapproved by the BRA (a "Design Review Impasse"), either party may, by written notice to the other party, invoke the provisions contained in Exhibit G attached hereto.

If Associates receives no notification from the BRA of such disapproval within ten (10) days after submission of the Design Development or any correction thereof, as the

case may be, such Design Development or corrected Design Development shall be deemed approved.

- d. Within the greater of one hundred eighty (180) days after the BRA has approved or has been deemed to approve the Design Development or one hundred eighty (180) days following receipt by Associates of all environmental permits and approvals necessary to enable construction of the Improvements as shown in the approved or deemed approved Design Development (including, without limitation, licenses to fill and erect structures pursuant to Mass. G. L. c. 91) and the expiration of all applicable appeal periods without appeal, or, if an appeal shall have been taken the rendering of a final adjudication beyond appeal if in favor of the grant of such permit or approval, Associates shall submit to the BRA the Contract Documents for the Improvements (as described in the Design Review Procedure). The BRA shall review the Contract Documents for conformity with the approved Design Development and this Agreement and shall, within ten (10) days after receipt thereof, either approve the Contract Documents or notify Associates in writing of disapproval, specifying the respects in which the Contract Documents are disapproved.

In the event of a disapproval, Associates shall, within thirty (30) days after Associates receives the written notice of such disapproval, resubmit the Contract Documents altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Contract Documents shall be approved by the BRA; provided, however, if Associates shall have resubmitted such Contract Documents to the BRA, altered from the prior submission in response to the BRA's grounds for prior disapproval, and the same shall again be disapproved by the BRA (a "Design Review Impasse"), either party may, by written notice to the other party, invoke the provisions contained in Exhibit G attached hereto.

If Associates receives no notification from the BRA of such disapproval within ten (10) days after submission of the Contract Documents or any correction thereof, as the case may be, such Contract Documents or corrected Contract Documents shall be deemed approved.

- e. With respect to approvals by the BRA under Paragraphs 7a. through d. above, once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of the previously approved submission or to new elements which were not present in previous submissions. The BRA hereby approves the preparation of Design Development and Contract Documents for the Improvements having the same number of stories at the highest point as shown in the Schematic Design but having a height in feet of 182 measured to the top of the roof slab of the uppermost habitable floor (excluding any mechanical, air conditioning, elevator or stair rooms, equipment, housing, or towers or any parapet enclosing such rooms, equipment, housings or towers). During construction of the Improvements, the Construction Inspection portions of the Design Review Procedure shall be followed.
- f. The BRA acknowledges that the construction of the Improvements as shown in the approved Schematic Design requires the issuance to Associates of an extensive list of federal, state and municipal permits and approvals, many of which depend upon examination of environmental impacts not fully assessed on the date hereof. If Associates is unable to obtain all such necessary permits and approvals for construction of such Improvements, Associates shall redesign the Improvements to conform to any limitations or conditions imposed by such environmental review or in any such permit or approval, and the BRA shall recognize any such limitation or condition in its response to submissions of Design Materials by Associates hereunder.
- g. If the approved Schematic Design, Design Development or the Contract Documents for the Improvements shall be at variance with any development or dimensional controls of the Downtown/Waterfront/Faneuil Hall Urban Renewal Plan applicable to the Site the BRA shall adopt such minor modifications to such plan as may be necessary to construct the Improvements in accordance with the approved Design Materials.

8. As part of its submission of Contract Documents, or prior to submission of completed Contract Documents but after approval or deemed approval of Design Development, Associates may submit

plans and specifications prepared by the Architect for purposes of commencing work with respect to certain elements of the Improvements which may including site work, foundation work, filling, dredging and pile construction and other similar items which Associates proposes to commence on a "fast-track" basis. The BRA will promptly review said plans and specifications for "fast-track" construction and shall approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the BRA to be consistent with those portions of the Design Materials previously approved and with elements of the Contract Documents, if any have then been submitted by Associates, which are acceptable to the BRA. As a condition to proceeding with construction of any "fast-track" element, a copy of the construction contract for construction of such "fast-track" elements and a writing complying with the requirements of Paragraph 11(a) hereof shall be submitted by Associates in advance to the BRA for its approval and Associates shall meet the other requirements of Paragraph 11 hereof as applicable. In connection with the approval of "fast-track" construction elements and notwithstanding any inconsistent provisions of the Transaction Documents, the BRA shall make a final designation of Associates, the Lease shall be signed and the date of such execution shall be the Lease Commencement Date; provided, however, that approval of "fast-track" construction elements shall not waive the BRA's subsequent rights with respect to review and approval of all Design Materials. Any construction prior to BRA approval of the Contract Documents shall be at the sole risk of Associates and with respect to costs of corrective or additional work (which may include demolition) to conform the work to the Design Materials approved by the BRA.

9. It is the general policy of the BRA that all new buildings constructed in urban renewal areas shall be designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Associates' obligation to comply with all legal requirements applicable thereto, the Design Materials (including the Contract Documents shall conform to all requirements imposed by the Architectural Barriers Board of the Commonwealth of Massachusetts.

10. Not later than sixty (60) days after the date the BRA has approved or has been deemed to have approved the Contract Documents, Associates shall submit to the BRA a copy (certified by Associates to be true and correct) of a commitment subject only to such conditions as are typical of lender requirements for commercial loans of the size, issued by one or more lenders which

is or are an Institution as herein defined, whereby such lenders agrees to furnish construction financing for the Improvements contained in the Design Development (subject to such lender's approval of the Contract Documents) together with evidence reasonably satisfactory to the BRA that Associates has demonstrated, to the satisfaction of such lender, the availability of equity capital which, when combined with the financing to be provided by such lender, is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site (including any off-site improvements required by the Transaction Documents) in accordance with the Transaction Documents and this Agreement. Such commitment shall be accompanied by such further materials as the BRA may reasonably request evidencing satisfaction of, or Associates' ability to satisfy, the conditions to lending therein set forth. Institution shall mean the participation of any one or more of the following, either jointly or severally as to portions of the Improvements:

- a. a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code) chartered under the laws of The United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$300,000,000.
- b. an educational institution with a capital endowment of not less than \$300,000,000.
- c. a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a government body or of a religious or educational institution or for any trade union, and, in each case, having a net worth, determined in accordance with recognized accounting practices, of not less \$300,000,000.

11. Whether or not the Lease Commencement Date shall already have occurred, except as otherwise provided in Section 8, before beginning any demolition of or construction of Improvements on the Site, Associates shall first have submitted to the BRA the following:

- a. A copy (certified by Associates to be true and correct) of the contract between Associates and a general contractor or construction manager (hereinafter called the "Contractor") engaged by Associates for the construction of the Improvements shown and described in the Contract Documents, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to be performed by the Contractor and those engaged by him and the requirements of Paragraph 15 of this Agreement. Such contract and writing shall be subject to the reasonable approval of the BRA (or in the case of "fast-track" construction, any construction contract related thereto, if it exists).
- b. A copy of a building permit issued by the Boston Inspectional Services Department fully covering the Improvements, together with evidence satisfactory to the BRA that all fees in connection therewith have been paid. Associates shall not apply for a building permit for the construction of the Improvements without the prior certification of the BRA that the work to be done or completed as set forth in the permit application is in accordance with the Design Materials approved by the BRA.
- c. A copy of a performance and payment bond or other assurance of completion of the Improvements, if required by the Contract Documents.
- d. Associates shall carry or require that there be carried Workmens' Compensation Insurance for all of its employees and those of its contractors and subcontractors engaged in work on the Site, in accordance with applicable Workmens' Compensation laws.

Associates shall carry or require that there be carried General Public Liability Insurance with bodily injury limits of not less than \$1,000,000 for injury to or death of one person, and with such limits of not less than \$3,000,000 for injury to or death of more than one person, due to accidents which may occur or result from activities on the Site. Such insurance shall cover the use of all equipment, hoists and motor vehicles on the Site or hauling materials or debris from the Site. Associates shall further carry Property Damage Insurance

with limits of liability of not less than \$100,000 for each accident for accidents which might arise from activities on the Site. The BRA shall be named as co-insured on all insurance required hereunder. Associates shall furnish to the BRA proof of such insurance promptly upon request therefor by the BRA.

12. Associates shall at all times keep the BRA fully and currently advised of the status of all aspects of Associates' progress in meeting the terms and provisions of this Agreement with respect to the redevelopment of the Site, including, without limiting the generality of the foregoing, development of the Design Materials, securing of financing, and arrangements for construction. All contracts entered into by Associates respecting the redevelopment of the Site shall obligate the parties to act in a manner consistent with the obligations of Associates under this Agreement and the Lease. During the implementation of any such contracts the BRA shall have the right to review all aspects of the work performed thereunder in order to insure that such work is being undertaken in a manner consistent with the obligations of Associates under this Agreement.

13. Annexed as Exhibit H to this Agreement is a License dated November 4, 1983 granted by BRA to Associates (the "License"). Associates hereby agrees to perform and observe all the terms and conditions of the License. Associates shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

In the event this Agreement shall be terminated for any reason other than the failure of the BRA to perform its obligations hereunder, then Associates will turn over and cause others to turn over to the BRA all reports, test data, plans and other material developed in connection with its efforts hereunder relative to redevelopment of the Site or any part thereof. Associates agrees to use its best efforts (which shall not include the payment of additional money) to secure the agreement of the providers of the services so that the BRA (or others to whom the BRA may at any time transfer all or any part of such material) shall thereafter be free, without obtaining the consent of Associates or the provider or any such services and without liability or cost, to use material turned over to it or required to be turned over to it; provided, however, that except in the case of assignment to and assumption by the BRA of any contract between Associates and any such provider of services made in accordance with any such contract, prior to any such transfer the

BRA shall release and indemnify Associates and all such providers of services from and against any and all liabilities, claims, damages or demands, of every name and nature arising out of the use of such materials by the BRA or any such others. If any such contract shall be so assigned to the BRA, Associates shall remain liable for the cost of all services arising thereunder prior to the date of such assignment.

14. Associates agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the Site shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any pre-construction testing or exploration.

15. Associates, for itself and all successors and assigns, agrees that in the redevelopment of the Site and in all construction activity undertaken therein:

- a. Associates will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. Associates will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Associates agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- b. Associates will, in all solicitations or advertisements for employees placed by or on behalf of Associates, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin.
- c. Associates will send to each labor union or representative of workers with which Associates has a collective

bargaining agreement or other contract or understanding, a notice, to be provided advising the said labor union or workers' representative of Associates' commitment under Section 202 of Executive Order #11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- d. Associates will comply with all provisions of Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967 and by rules, regulations, and orders of the Secretary of Labor.
- e. Associates will comply with all provisions of Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967 and by rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to Associates' books, records, and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of Associates' noncompliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations, or orders, upon written notice to Associates, and the continuance of such non-compliance for sixty (60) days thereafter, there shall exist a default under this Agreement for which the BRA shall have the rights and remedies herein provided. In addition, Associates may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended by Executive Order #11735 of October 13, 1967 or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law.
- g. Associates will include the provisions of paragraph a. through f. of this paragraph 15 in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1956, as amended by Executive Order #11735 of October 13, 1967 so that such provisions will be binding upon each

such contractor, subcontractor, or vendor as the case may be. Associates will take such action with respect to any construction contract, subcontract, or purchase order as the BRA directs as a means of enforcing such provisions, including sanctions for noncompliance. Provisions, however, that in the event Associates becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the BRA, Associates may request the United States to enter into such litigation to protect the interest of the United States.

Associates, for itself and its successors and assigns, further agrees, to the extent permitted by law, that in all construction activity undertaken with respect to the Site, it will pursue the efforts hereinafter described to employ workers in construction so that the worker hours on a craft-by-craft basis shall be performed as follows:

- A. at least 50% by bona fide City of Boston residents;
- B. at least 25% by minorities;
- C. at least 10% by women.

Such efforts shall consist of the following:

- i. Associates shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon any such general contractor or construction manager (a) to pursue the efforts enumerated in this paragraph 15 and (b) to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts.
- ii. Each of Associates, its general contractor or construction manager, and each subcontractor shall designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein.
- iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of Associates, its general contractor or construction manager, and each subcontractor then

selected shall hold a pre-job conference with appropriate union representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Project and the manning requirements for construction activity over the life of the construction period.

- iv. Each request for qualified construction workers made by any person involved in the construction of the Project to a union hiring hall or busienss agent shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Project be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such request, the affirmative action officer of such requesting party shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the BRA's affirmative action officer.
- v. All persons applying directly to any general contractor, construction manager or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the BRA's affirmative action officer and a written record of such referral shall be made, a copy of which shall be sent to such officer.

Each of Associates, any general contractor or construction manager, and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the requirements of this Paragraph 15

for at least one year after the Completion Date and will make the same available for inspection by the BRA upon reasonable notice.

16. The parties acknowledge and agree that any Institution involved in the development of the Site with Associates as leasehold mortgagee, may require modifications to the form of Lease for the purpose of implementing the mortgagee protection provisions thereof or otherwise facilitating the "financeability" of the Lease. The BRA agrees not to withhold unreasonably its agreement to enter into such requested modifications provided that, in the sole opinion of the BRA, the same shall in no way affect the term or rent (base, percentage or additional) or otherwise in any material respect adversely affect any of the rights or interests of the BRA under the Lease. Without limitation, before giving any such agreement, the BRA may require reasonable changes to any proposed modification.

17. Associates hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys' fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as the result of any activities undertaken by or for Associates in its implementation of this Agreement or its activities with respect to the Site, but such indemnification shall not extend to liability incurred or asserted as a result of any activity undertaken by or for the BRA in implementing its obligations hereunder.

18. If: x) Associates shall not make any monetary payment thereunder within ten (10) days after the due date thereof, or y) Associates shall neglect or fail to perform or observe any other obligation herein contained to be performed or observed on the part of Associates and the BRA shall serve upon Associates notice of such neglect or failure and if the same shall not be cured within thirty (30) day period, Associates shall fail to commence such cure within such thirty (30) day period and diligently prosecute the same to completion no later than sixty (60) days after the expiration of such thirty (30) day period, or z) the Lease shall not, for whatever reason other than failure or the BRA to act in good faith with respect to the negotiation and execution thereof, be executed by November 15, 1989, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of Associates and terminate all other rights, interests and claims of Associates to

and in the Site. Except with respect to those obligations which survive termination as provided in the following sentence, termination of this Agreement, together with retention of all payments theretofor made hereunder, shall be the sole remedy in lieu of all of the rights and remedies the BRA may have against Associates on account of any failure or default on the part of Associates hereunder. Notwithstanding such termination, Associates shall remain liable for all obligations theretofore accrued by it hereunder and the obligations of Associates under Paragraphs 13, 14, and 17 hereof shall survive the termination of the Agreement, but otherwise Associates' obligations shall not survive termination.

19. a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

b. The waiver by the BRA or Associates of any breach of any term of condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

c. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

d. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

e. No member of the Congress of The United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this

Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly, interested.

f. No member, official or employee of the BRA shall be personally liable to Associates in the event of any default or breach by the BRA or for any amount which may become due to Associates or on any obligations under the terms of this Agreement.

g. Except as otherwise specifically provided in this Agreement whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or Associates.

Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal service, by depositing same in the United States Mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA,

the address of the BRA is:

Boston Redevelopment Authority
Director's Office
City Hall
1 City Hall Square
Boston, Massachusetts 02201

with a duplicate copy to:

James F. White, Esquire
Palmer & Dodge
One Beacon Street
Boston, Massachusetts 02108

5/22/84 Tue 9:06

and if addressed to Associates, the address of Associates is:

c/o The Beacon Companies
One Post Office Square
Boston, Massachusetts 02109

with a duplicate copy to:

Myrna Putziger, P.C.
McCormack & Zimble
225 Franklin Street
Boston, Massachusetts 02110

Either the BRA or Associates may change its respective addresses by giving written notice to the other in accordance with the provisions of this Paragraph.

Any request for approvals made by Associates to the BRA where such approvals shall be deemed granted after a period of non-reply by the BRA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type in each instance setting forth the applicable length of such period of nonreply:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN _____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

h. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

i. Upon execution of the Lease as required hereby, this Agreement shall terminate, provided that the provisions of Paragraphs 4, 5, 6, 7d. through 7g., 8, 10, 15, 20 and 22 shall survive the termination of the Agreement.

j. In its discretion, the BRA may waive any conditions herein contained to be performed for its benefit.

k. The rights and obligations of the parties hereto shall be binding upon and shall inure to the benefit of their respective successors and assigns (in case of Associates, to the extent any such assignment is herein permitted) of the parties hereto. The BRA shall not unreasonably withhold its consent to any assignment by Associates of some of all of its rights or obligations hereunder to (i) any entity under common control with Associates formed for the purpose of owning or operating any portion of the Improvements or (ii) any entity formed by Associates or any entity described in clause (i) hereof and one or more Institutions providing financing for the Improvements.

20. Associates has on the date hereof paid to the BRA and BRA acknowledges receipt by check of an initial deposit of \$105,000. The balance of the total deposit of \$210,000 due hereunder shall be paid to the BRA ninety (90) days from the date hereof.

21. Associates acknowledges that the Improvements are comprised in part of uses described in Section 26-3 of Article 26 of the Boston Zoning Code as in effect on the date hereof (the "Linkage Provisions"), and that the aggregate floor area of the Improvements dedicated to such uses exceeds 100,000 square feet. Accordingly, the Improvements constitute a Development Impact Project as defined in the Linkage Provisions. Associates agrees that in connection with its application for zoning relief pursuant to the Boston Zoning Code it will enter into a Development Impact Project agreement, on terms and conditions to be agreed upon between the parties hereto, for the payment of the Development Impact Project Exaction required pursuant to the Linkage Provisions.

22. No general partner or limited partner of Associates shall have any personal liability for the obligations of Associates hereunder. The BRA agrees to look only to the assets of Associates and not to the assets of any general or limited partner of Associates in the event of any breach by Associates of its obligations hereunder, it being understood that in no event shall the assets of any general or limited partner (present or future) of Associates, other than their interest in the Contract

5/22/84 Tue 9:06

Documents and other materials with respect to the Site, be subject to liability for any such breach.

WITNESS the execution hereof on this _____ day of _____, 1984, under seal.

Approved as to form

BOSTON REDEVELOPMENT AUTHORITY

Corporation Counsel
City of Boston

By: _____
Director

ROWES WHARF LIMITED PARTNERSHIP

By: _____
General Partner

5/22/84 Tue 9:06

LIST OF EXHIBITS

- A. Site Description
- B. BRA Resolution of May 25, 1983
- C. Rowes/Fosters Wharf Lease Commencement Agreement Summary
- D. BRA Resolution of November 16, 1983
- D-1. Structure for Lease and Conveyance
- E. Design Review Procedure
- F. Development Program
- G. Arbitration of Design Review Impasse
- H. License
- I. List of Fill Licenses

EXHIBIT A

Site Description

A parcel of land and water known as Rows and Fosters Wharves, on Atlantic Avenue in Boston, Suffolk County, Massachusetts, bounded and described as follows:

Beginning at a point on the easterly sideline of Atlantic Avenue, said point being the northwest corner of the property to be described, said property being now or formerly of the Boston Redevelopment Authority, said point of beginning having a Massachusetts Coordinate System value of $X=721,346.69$ and $Y=494,815.18$;

Thence running $N\ 71^{\circ}\ 12'\ 21''\ E$ along land or formerly of First City Developments Corp. of Boston - Harbor Towers II, a distance of six hundred forty-six and $50/100$ (646.50) feet to a point on the State Harbor Line and former United States Pierhead & Bulkhead Line established by the War Department on April 24, 1940;

Thence turning and running $S\ 28^{\circ}\ 55'\ 55''\ W$ along said State Harbor Line and former United States Pierhead & Bulkhead Line a distance of eight hundred fifty and $01/100$ (850.01) feet to a point;

Thence turning and running $N\ 69^{\circ}\ 05'\ 34''\ W$ along a line perpendicular to the Harbor Line in Boston Harbor established by Chapter 170 of the Acts of 1880 a distance of thirty-three and $12/100$ (33.12) feet to a point;

Thence turning and running $N\ 78^{\circ}\ 09'\ 39''\ W$ along land now or formerly of Atlantic Avenue Limited Partnership, a distance of two hundred one and $29/100$ (201.29) feet to a point;

Thence turning and running $N\ 9^{\circ}\ 10'\ 35''\ E$, along the easterly sideline of said Atlantic Avenue, a distance of two hundred thirty-one and $00/100$ (231.00) feet to a point;

Thence turning and running $N\ 2^{\circ}\ 11'\ 11''\ W$ along the easterly sideline of said Atlantic Avenue, a distance of two hundred fifty-four and $67/100$ (254.67) feet to the point of beginning, said parcel containing 234,224 square feet, more or less and being shown on a plan entitled "Property Line Plan for The Beacon

Companies, Atlantic Avenue, Boston, Massachusetts" dated April 16, 1984, Scale 1 inch = 40 feet, prepared by Cullinan Engineering Co., Inc.

EXHIBIT B

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: TENTATIVE DESIGNATION OF REDEVELOPER
ROWES/FOSTERS WHARF
IN THE WATERFRONT URBAN RENEWAL AREA
PROJECT NO. MASS. R-77

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

WHEREAS, the Urban Renewal Plan for the Waterfront Urban Renewal Area, Project No. Mass. R-77, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State and Federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin, and

WHEREAS, Rowes Wharf Company has expressed an interest in and has submitted a satisfactory proposal for the development of Rowes/Fosters Wharf in the Waterfront Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Section 61 and 62 of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Rowes Wharf Company be and hereby is tentatively designated as Redeveloper of Rowes/Fosters Wharf in the Waterfront Urban Renewal Area subject to:

(a) Concurrence in the proposed disposal transaction by the Department of Housing and Urban Development, if necessary;

(b) Publication of all public disclosure and issuance of all approvals required by the Massachusetts General Laws and Title I of the Housing Act of 1949, as amended;

(c) Submission by the Redeveloper to the Authority within thirty (30) days of a letter of intent in which the Redeveloper agrees to comply with the following Lease provisions and acknowledgements:

- (i) The Lease Commencement Agreement will be executed within ninety (90) days of tentative designation and the developer further agrees to comply with all the requirements necessary for final designation and lease execution within one hundred eighty (180) days of execution of Lease Commencement Agreement.
 - (ii) The Lease commencement date is agreed to be simultaneous with Final Designation and said Lease will be for a term of one hundred (100) years for the residential portion and eighty (80) years for the commercial portion.
 - (iii) The Lease base rental of \$2,000,000 annually will commence at Lease Commencement Date and the Lease shall provide for a Percentage Rental of 10% of annual net cash flow payable monthly in advance and additional income requirements detailed in the Lease Commencement Agreement Summary attached.
 - (iv) The Redeveloper agrees that the monthly rental of the parking lot and boating operations will continue to be paid the Authority until the actual commencement of construction.
 - (v) The Letter of Intent shall include a provision that no building on the site can exceed one hundred sixty-five (165) feet in height and shall also include such other terms and conditions as the Director deems appropriate and in the best interest of the Authority including summary terms of the leasehold agreement as attached hereto.
- (d) Submission within one hundred eighty (180) days in a form satisfactory to the Authority of:
- (i) Evidence of the availability of necessary financing for project; and
 - (ii) Preliminary working drawings and outline specifications consistent with this designation and the controls of the Waterfront Urban Renewal Plan.
2. That disposal of Rows/Fosters Wharf by negotiation is the appropriate method of making the land available for development.
 3. That it is hereby determined that Rows Wharf Company possess the qualifications and financial resources necessary to acquire and develop the land in accordance with the Urban Renewal Plan for the Area.
 4. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and, further, that all practicable and feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.

5. That the Director is authorized to issue a license to Rowes Wharf Company for early entry to the site for test borings and other related survey work prior to final designation and to execute a Letter of Intent and a Lease Commencement Agreement incorporating the above terms and conditions.
6. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105(E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement for Public Disclosure" (Federal Form H-50040).

ROWES/FOSTERS WHARF LEASE COMMENCEMENT AGREEMENT SUMMARY

Within 90 days of Tentative Designation, the Rowes Wharf Company and the Boston Redevelopment Authority (BRA) must enter into a Lease Commencement Agreement containing the conditions of Final Designation. The Lease Commencement Agreement will be based on the terms and conditions specified below, which will become effective upon Final Designation.

PROPERTY:	Rowes/Fosters Wharf, as designated by Lessor
LESSOR:	BRA
LESSEE:	Rowes Wharf Company
TERM:	For Residential Portion of Property, 100 years with renewal options. For Commercial Portion of Property, 80 years without renewals.
RESIDENTIAL PORTION:	Condominium units, condominium parking spaces, and any area directly related to the condominium units and parking.
COMMERCIAL PORTION:	All public areas, all commercial parking, all office and retail space, all terminal space and all areas related to the above uses.
FINAL DESIGNATION:	Not more than 180 days from the execution of the Lease Commencement Agreement, subject to extension by mutual agreement of Lessor and Lessee.
LEASE COMMENCEMENT DATE:	Simultaneous with Final Designation.
NET RENT:	A. Base Rent for Residential Portion - \$900,000 per annum payable monthly in advance, commencing at the Lease Commencement Date. On the fifth anniversary of the Lease Commencement Date, Base Rent is adjusted by 50% of the cumulative CPI over the preceeding five years; and on the sixth anniversary, and every year thereafter, base rent is adjusted by 50% of the prior year's CPI. B. Base Rent for Commercial Portion - \$1,100,000 per annum payable monthly in advance, commencing at the Lease Commencement Date.

C. Percentage Rent for Commercial Portion - 10% of annual Net Cash Flow payable monthly in advance based on a budget prepared annually and submitted to Lessor not less than 60 days prior to the beginning of each fiscal year. Annual Net Cash Flow will be calculated by subtracting the following items from effective gross income: certified operating expenses, real estate taxes, Base Rent, and an annual amount equal to 12.5% of certified total project costs. Within 90 days of the end of each fiscal year, Lessee must submit a calculation of Percentage Rent for that year certified by a CPA acceptable to Lessor and must make a payment, or receive a credit, of Percentage Rent based on the certified statement. Until the annual Percentage Rent amount is certified, and payments and credits are allocated, the monthly Percentage Rent payment in any fiscal year must be no less than one-twelfth of the Percentage Rent payable in the previous fiscal year.

OPTION TO
PURCHASE:

Each condominium unit will have an option to purchase the fee interest in the land or airrights relating to its unit from the Lessor on the fifth anniversary of the Lease Commencement Date. The purchase price will be equal to its pro rata portion of \$10,000,000 valued in the year of the Lease Commencement Date, escalated annually by 50% of CPI. The purchase price will be paid by granting the Lessor a 70-year first mortgage on the condominium unit in the full amount of the purchase price with interest payable of the then current prevailing first mortgage rate such interest rate to be adjusted thereafter if such adjustment is customary at that time.

SUBORDINATION: Lessor's fee interest in the Property will not be subordinated. Lessor's Base Rent for the Residential Portion and for Commercial Portion will not be subordinated. Percentage Rent for the Commercial Portion will not be subordinated. In the event of a foreclosure, the Lessor will waive Percentage Rent for five years if Net Cash Flow is not available.

FINANCING: Any initial permanent financing for the Commercial Portion may not exceed certified total project costs.

REFINANCING: Lessor will receive as Additional Rent 10% of net refinancing proceeds upon refinancing of the Commercial Portion.

SALE: Lessor will receive as Additional Rent 10% of net sales proceeds upon sale of the Commercial Portion.

RESIDENTIAL
CONDOMINIUM
SALES
PARTICIPATION: Lessor will receive as Sales Participation 10% of Residential Condominium gross sales above \$295/NSF upon Lessee initial sale of Residential Condominium.

ALIENATION: Lessee may not dispose of its interest in the Commercial Portion for five years after issuance of a final certificate of occupancy. Thereafter, Lessee may not dispose of its interest in the Commercial Portion without the written consent of Lessor, such consent not to be unreasonably withheld.

ESTOPPEL
CERTIFICATE: Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

CONSTRUCTION
OF
IMPROVEMENTS: Lessee must construct improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 36 months of such Designation. Phasing of the improvements will not be permitted by the Lessor. Maximum height must not exceed 165 feet.

BOOKS AND
RECORDS: Lessee must provide Lessor with a statement of project costs computed in accordance with the Land Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a final certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval.

In addition to the reports required for the Percentage Rent calculation, Lessee must provide Lessor with a statement of operation for the Commercial Portion certified by a CPA, and approved by the Lessor, within 90 days of the close of each fiscal year. Lessor will use industry standards as a guide to Lessor's approval.

SURFACE
PARKING AND
BOATING: The existing temporary parking use and boating use on the Property must continue until the commencement of construction and all rent payable during this time will continue to be paid directly to the Lessor. The Lessee must provide access and space to allow the boating use to continue during the construction period.

AFFIRMATIVE
ACTION: Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

REAL ESTATE
TAXES:

The Property will be fully taxable by the Assessor of the City of Boston at applicable rates.

LIABILITY:

Lessor and the City of Boston will not incur any expenses in the development of the Property. The Property will be leased in an "as is" condition. Lessee will pay for the cost of any utility relocation not paid by any utility company.

ROWES/FOSTERS WHARF

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NOVEMBER 16, 1983

VOTED: That the Resolution adopted by the Authority on May 25, 1983, with respect to the tentative designation of a Redeveloper for Rowes/Fosters Wharf in the Downtown Waterfront-Faneuil Hall Urban Renewal Area and in the Rowes/Fosters Wharf Lease Commencement Agreement Summary incorporated therein by reference (the "Initial Resolution"), are hereby amended as follows:

1. The revised development proposal of the Redeveloper as described in Attachment 1 dated October 25, 1983 annexed hereto and in the Redeveloper's letter to the Director of the Authority dated October 25, 1983, including, without limitation, the re-allocation of 130,000 square feet of the Residential Condominium Portion of the project from residential units to executive suites, an all-suite hospitality facility, is hereby approved by the Authority and shall be for all purposes the development proposal described in said Initial Resolution.
2. The Redeveloper shall enter into a Lease Commencement Agreement with the Authority, consistent with the provisions of the Initial Resolution, as amended herein, within 60 days from the adoption of this vote.
3. The Base Rent under the Lease of \$2,100,000 will commence on November 15, 1984. Such rental is further defined in the attachment dated November 16, 1983 and entitled, "ADDITIONAL TERMS AND CONDITIONS FOR ROWES/FOSTERS WHARF, AMENDING THE RESOLUTION ADOPTED BY THE AUTHORITY ON MAY 25, 1983"; said attachment is hereby incorporated by reference and made a part thereof.

ADDITIONAL TERMS AND CONDITIONS FOR ROWES/FOSTERS WHARF

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- D. Base Rent for Commercial Portion under the Lease shall be \$1,100,000 per annum, increased by the percentage rent for the Commercial Portion set forth in the Initial Resolution.
2. The provisions of the Initial Resolution dealing with the option to purchase the fee interest in the Property are amended as follows:
- A. The Redeveloper will have an option to purchase the fee interest in the land or air rights related to, or condominium rights in, the Executive Suite Portion of the project, including such right to 100 parking spaces within the parking facilities, for a purchase price of \$3,400,000.
- B. The Redeveloper will have an option to purchase the fee interest in the land or air rights related to, or condominium rights in, the Residential Portion of the Project, including such rights to 225 parking spaces within the parking facilities, for a purchase price equal to the Base Rent for the Residential Portion under the Lease in the year or purchase capitalized at a rate of 12½%.

In the event of the exercise by the Redeveloper of its option to purchase the Residential Portion, or any portion thereof, prior to November 15, 1989, the purchase price for such portion shall be computed as though the Base Rent for the Residential Portion had already been adjusted on November 15, 1989 by fifty percent (50%) of the cumulative change in the CPI over its level on November 15, 1984 by using the actual change in the CPI from November 15, 1984 to the date of purchase and assuming that the cumulative change from date of purchase to November 15, 1989 will reflect the same change which occurred in the period between November 15, 1984 and the date of purchase.

- C. In the case of both the Residential Portion and the Executive Suite Portion of the Project, the purchase price will be paid by granting the Authority a seventy (70) year first mortgage on the portion purchased in the full amount of the purchase price with interest payable at the then current prevailing first mortgage rate, such interest rate to be adjusted thereafter if such adjustment is customary at the time of the granting thereof.

ADDITIONAL TERMS AND CONDITIONS FOR ROWES/FOSTERS WHARF

-3-

- D. The option to purchase granted herein may be exercised by the Redeveloper with respect to the Residential Portion, or any portion thereof, or the Executive Suite Portion at any time subsequent to the issuance by the Authority to the Redeveloper of a Certificate of Completion with respect to each such Portion, or portion thereof.
 - E. The Redeveloper shall have the right to substitute collateral in exchange for the Authority's first mortgage lien of a commercially acceptable nature and quality, reasonably acceptable to the Authority.
3. The Initial Resolution provides that the Authority shall receive a Sales Participation of ten percent (10%) of the gross sales generated by the sale of residential condominiums above \$295/NSF. Amounts paid by the Redeveloper or any unit purchaser for the acquisition of a fee interest in a portion of the Residential Portion of the project shall be independent of the computing of such Sales Participation. In addition to such Sales Participation the Authority will receive a Sales Participation equal to ten percent (10%) of the gross sales proceeds from the sale of parking facilities which are a portion of the Residential Portion of the Project in excess of \$33,000 per space.
 4. The Redeveloper shall pay to the Authority a deposit in the amount of \$210,000 as follows:
 - A. \$105,000 shall be paid simultaneously with the execution of the Lease Commencement Agreement; and
 - B. \$105,000 shall be paid on the six-month anniversary of the execution of the Lease Commencement Agreement.

Said deposit shall constitute a prepayment of rent applicable to the first monthly payments of Lease Base Rent required pursuant to the lease between the Redeveloper and the Authority. Said deposit shall be retained by the Authority as liquidated damages in the event of a termination of the Lease Commencement Agreement between the Redeveloper and the Authority by reason of a default thereunder by the Redeveloper. The Authority shall be under no obligation to segregate the amount of such deposit and may expend the amount thereof in its unrestricted discretion.
 5. The following schedule for lease execution, production of evidence of financing, preparation of drawings and final designation is hereby substituted for the schedule contained in the Initial Resolution:

ADDITIONAL TERMS AND CONDITIONS FOR ROWES/POSTERS WHARF

-4-

- A. The minimum requirements for final designation shall be:
- (1) evidence of the availability of necessary financing for the project; and
 - (2) preliminary working drawings and outline specifications for the project approved by the Authority in accordance with procedures for design review set forth in the Lease Commencement Agreement.
- B. If the rent commencement date described in paragraph 1 above shall be prior to the satisfaction by the Redeveloper of the requirements for final designation, the lease shall provide for the survival of the provisions of the Lease Commencement Agreement until such requirements have been satisfied and the Authority has finally designated the Redeveloper.
6. To the extent not inconsistent with the provisions of this vote, the Initial Resolution is hereby ratified and confirmed.



The Beacon Companies

One Post Office Square
Boston, Massachusetts 02109
(617) 451-2100

October 25, 1983

Mr. Robert J. Ryan, Director
Boston Redevelopment Authority
One City Hall Plaza
Boston, Massachusetts 02210

Re: Rowses/Fosters Wharf

Dear Mr. Ryan:

We want to take this opportunity to thank you for the courtesies extended at our meeting of October 11. We greatly appreciate your continuing support of our development plans for Rowses Wharf, and want to reiterate our commitment to complete Rowses Wharf as one unified project, as discussed at that meeting. This commitment encompasses all aspects of the project, including the commercial, residential and parking components, as well as the public walkways and open spaces, the ferry terminal and boarding pavilion.

As discussed last week, there are three refinements to the project which we have asked you to consider. We wish to summarize the material presented to you previously, reiterating the basis for and benefits to be derived from the following:

1. Modifications to height and massing
2. Refinements in uses
3. Rent commencement schedule

1. Modifications to Height and Massing

In accordance with your request to reduce the height of the project, we directed Skidmore, Owings & Merrill to undertake an extensive series of height and massing studies, the results of which were presented in our meeting. This design is represented in a series of sketches, plans and elevations submitted under separate cover. These materials have been submitted to the Authority's design staff for their approval at the schematic design level. These designs are of course subject to ongoing review, consistent with our Agreement.

The 165' design maintains the total program area by displacing the mass which exceeded the height guidelines to a bridge area between the two buildings along Atlantic Avenue. The bridge area creates a large, archway space, skylit from above, which becomes the unifying element along the Atlantic Avenue facade. This design maintains all of the best attributes of our original submission. The site plan, including the wharf contour

Mr. Robert J. Ryan, Director
October 25, 1983
Page 2

and the network of public open spaces, water areas and walkways, remains completely unchanged. The designs of the residential buildings on the wharves are the same, as is the ferry terminal and boarding pavilion. Materials are consistent with our proposal, again subject to ongoing design development.

The new design provides an additional public benefit. The archway will be a very public space, providing the centerpiece of civic prominence this project deserves. The space is over six stories in height, comparable in scale to the central courtyard of the Boston Public Library. It will be a dramatic front door to Rows Wharf, drawing people towards and into the project. Once entered, the space will function as the hub from which other public uses emanate.

We would like to clarify one further point regarding the project height. In accordance with zoning practices, as shown in previous submissions, the height of the project is 165' to the parapet, with mechanical above.

2. Refinements in Uses

During the process of design studies mentioned above, an additional factor emerged, unforeseen at the time of designation. The Central Artery reconstruction project, mentioned briefly in our Letter of Intent, became increasingly probable. We accordingly directed SOM to study the June 30 Draft EIS/EIR to determine what impact this construction project could have on our development plans for Rows Wharf. The initial results of this study were chilling. A twelve-year construction period is envisioned, planned to commence in late 1986 to early 1987, just as we expected to be marketing and occupying Rows Wharf.

Our immediate concern, confirmed by the response of our marketing consultants, was the potential harmful effect on the marketing of condominiums, particularly those located along Atlantic Avenue. The impact was potentially so great as to jeopardize the financial feasibility of the project. In response to this combination of physical and market impacts, we have pursued two courses of action. First, together with SOM, we prepared a detailed series of comments to the Draft EIS concerning the construction and long-term impacts of the Artery project, with suggestions for the mitigation of those impacts, a copy of which was sent to you; and followed up upon the requests for those mitigations with meetings with the EOTC. Second, we analyzed various program refinements to determine which uses were compatible with the overall program and were 1) less sensitive to Artery construction impacts, 2) would serve as a buffer for the residential uses, and 3) would enhance the program in the long-term. This analysis coincided with and was integrated with the ongoing massing studies. Our analysis resulted in the reallocation of 130,000 sf of space along Atlantic Avenue from residential condominium use to use as Executive Suites. 130,000 sf represents less than 15% of the total built area, yet this refinement will have a considerable impact on Rows Wharf in both

public benefits and project feasibility. The attached schedule recapitulates the program as presented to you at our meeting.

The Executive Suites will be more resistant to potential negative impacts of the Central Artery than the condominiums which they replace. The suites also offer other substantial benefits to the project:

- Strengthened mixed-use scheme: When completed, the overall development will have a better balance between more active and intensively used commercial areas, and the more private residential condominiums. It will be a true mixed-use project, with no one element predominating.
- Enhanced public access: The Executive Suites energize the project by providing a public destination at the site's southern edge. The water basin will be completely activated with indoor and outdoor restaurants which complement the ferry terminal and the marina. Pedestrians will be drawn to and through the site, fully realizing the public benefit of the Walk-by-the-Sea.
- Increased public utilization: The mix of uses will result in active use of the site 18 hours a day. This is particularly desirable as a means of populating this area in the evening, increasing security for adjoining properties as well as Rows Wharf.
- Improved feasibility of condominium component: Our marketing consultants have strongly recommended providing hotel-style services as a necessary and vital amenity to the condominiums, similar to marketing strategy for the Ritz Condominiums and the Four Seasons. Certain of the residential units will be located directly above the suites, and they will therefore be easily connected for service and security purposes to the hotel facility. These units should be particularly attractive for corporate users.
- Enhanced office leasing: Beacon's recent successful rent-up of One Post Office Square demonstrates the synergy that exists between office and hospitality uses. Meeting and board rooms, specialized telecommunications facilities and food and beverage services are important amenities that can be efficiently offered through the suite facilities.
- Permanent jobs: Hospitality and service uses are by definition labor intensive; we expect permanent jobs will increase substantially from the number projected in earlier submissions.

Our market analysis of the Executive Suite use indicates that it will be a viable concept in this location. Suite hotels are distinguished by providing all units with separate rooms for work and sleep. Because of this unique physical characteristic, suite hotels cater to distinct market

segments: commercial travelers on longer visits; women travelers; relocating employees; and families. As a result of this market orientation, and because of its small size, this property will have a negligible impact, if any, on existing or planned hotels in the Downtown market. It should have no impact on the Back Bay hotels, a distinct sector within the Boston market.

Finally, we have prepared proforma statements for the Executive Suite component, which are attached. Also provided are revised proformas showing the increased feasibility of the condominium components.

3. Rent Commencement Schedule

The design, financial and market studies discussed above have perforce taken some time to complete. This unavoidable detour in the development process and the projected longer duration of environmental reviews because of the Central Artery environmental process necessitates an adjustment to the original schedule for development and for commencement of rent. Understanding the Authority's desire to establish a definite date for the start of rent payments, we have suggested that rent payments commence on the later of one year from the date initiating the MEPA process with filing of the Environmental Notification Form (ENF); or receipt of all City of Boston discretionary permits, applied for within one year from the date of filing of the ENF.

In demonstration of our good faith in seeking this amendment, we suggest a prepayment of rent in an amount of 10% of the annual proposed payments. This amount will be applied to the first year's rent, and will be paid in two installments: half at the time of execution of the Lease Commencement Agreement; with the balance to be paid six months from that anniversary.

We would also like to stress two other matters which remain unchanged from the resolution voted by the Board. Neither the rent proposal nor the construction period change from those provisions carried in the tentative designation voted:

- Financial Benefits to City: Base rent and percentage rent will be the same or greater than previously proposed. (See the attached recalculation of rent based on the refined program.)
- Construction Period: We are committed to construction of all public areas, exterior work and shell construction in accordance with the three-year (36 month) schedule. Tenant fit out and condominium unit finishes will be completed pursuant to the actual leasing and sales of those areas. As previously discussed, financing and ownership requirements will necessitate that separate certificates of completion and occupancy be issued for each project component.

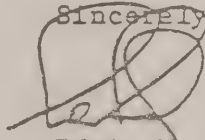
We have been greatly encouraged by the response to these project refinements as presented at our previous meetings. We believe that these changes, taken together, result in a far stronger project in terms of design, financial

Mr. Robert J. Ryan, Director
October 25, 1983
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feasibility and benefits to the City. We now seek your determination whether the foregoing matters should be submitted to the BRA Board for their approval. We are preparing renderings of the modified design, which will be completed for use at the Board meeting on November 3, if you so desire. We also seek your approval to initiate presentations of the project as outlined above to public groups and regulatory bodies, including the Boston Society of Architects, the Boston Harbor Associates and the various State environmental permitting agencies. Finally, we are preparing the ENF, which could be filed for publication in the November 15 Environmental Monitor.

We again want to thank you for your ongoing consideration and support of our development plans. Carol Gladstone, the project manager, is of course available to answer any questions you or your staff may have.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Edwin N. Sidman', written over a circular stamp or seal.

Edwin N. Sidman

ENS/sw

bcc: Carol Gladstone
W. Gary Atkinson
James Becker
Edward McCormack
Ronda Canter
Myrna Putziger
Bob Weinberg

ROWES/FOSTERS WHARF

ATTACHMENT 1: Summary of Program Refinements
October 25, 1983

	PRE-ARTERY		POST-ARTERY	
	<u>Total Area</u>	<u>% Area</u>	<u>Total Area</u>	<u>%Area</u>
OFFICE	265,000	32%	265,000	32%
CONDOMINIUMS	375,000	44%	245,000	29%
	(240 units)		(150 units)	
EXECUTIVE SUITES	--	--	130,000	15%
			(160 suites)	
RETAIL & TERMINAL	25,000	3%	25,000	3%
PARKING/SERVICE/ LOADING (below grade)	<u>175,000</u>	<u>21%</u>	<u>175,000</u>	<u>21%</u>
TOTAL BUILT AREA:	840,000	100%	840,000	100%

EXHIBIT D-1

Structure for Implementing Lease and Conveyance of Portions of the Improvements

In addition to other provisions required by this Agreement, the Lease shall contain provisions implementing the structure described herein for the disposition of the Site to Associates, and creation of a condominium thereon, in accordance with the Transaction Documents.

1. It is intended that the Improvements to be constructed by Associates on the Site shall consist of three elements: an office/retail unit, an hotel unit and a residential unit (individually, the "Office/Retail Unit", the "Hotel Unit" and the Residential Unit"; collectively, the "Units"). It is further intended that a single condominium (the "Condominium"), consisting of the three Units, shall be created from the Improvements and the Site at such time (the "Completion Date") as i) construction of the Improvements has reached the point sufficient therefor under M.G.L. c.183A, and ii) a certificate or certificates of completion has been issued for all of the Improvements. Subject to final approval of the BRA of the precise areas to be encompassed by each of the Units (to be reflected in the Contract Documents, it is intended that Units generally be comprised as follows (with appropriate provision to be made for any cross-easements or the like needed to insure the ability to maintain and use the Units):

A. The Office/Retail Unit shall consist of:

- (i) those portions of the Improvements designed for use as office space or retail/restaurant space and related service and loading facilities; and
- (ii) all entrances and lobbies designed for use in connection with such office and retail/restaurant portions, and all escalators, elevators, and stairwells providing access to or egress from any such portions exclusively;

B. The Hotel Unit shall consist of:

- (i) all portions of the Improvements designed for use as

sleeping accommodations for transients and all spaces designed for uses accessory to such hotel use, including, without limitation, laundry facilities, reception areas, meeting rooms and related storage, service, kitchen and loading facilities;

- (ii) all entrances and lobbies designed for use in connection with such hotel portion and all escalators, elevators, and stairwells providing access to or egress from any such portions exclusively; and
- (iii) all portions of the Improvements designed for use as a health club with ancillary food service areas and observatory (the "Health Club").

C. The Residential Unit shall consist of:

- (i) the North Wharf building as shown in the approved Schematic Design of the Improvements, other than any space within such building which is part of the Office/Retail Unit;
- (ii) the Central Wharf building as shown in the approved Schematic Design of the Improvements, other than any space within such building which is part of the Office/Retail Unit;
- (iii) all portions of the remainder of the Improvements designed to consist of dwelling units as that term is defined in the Commonwealth of Massachusetts State Building Code; and
- (iv) all entrances and lobbies designed for use in connection with such residential portions and all escalators, elevators, and stairwells providing access to or egress from any such portions exclusively.

Certificates of completion shall be issued in accordance with the usual procedures and requirements of the BRA when the Improvements have been substantially completed in accordance with the approval Contract Documents, as modified with the approval of the BRA, provided, however, that the following items of work need not be substantially completed (for purposes of the issuance of certificates of completion) even if the same shall have been

included in such Contract Documents.

- (i) All interior partitions except demising partitions between each Unit;
- (ii) Interior wall finishes;
- (iii) Interior ceilings;
- (iv) Interior floor finishes;
- (v) Doors, frames and hardware;
- (vi) Elevators and escalators;
- (vii) Mechanical, electrical, plumbing, fire protection and life safety-central equipment, main risers and distribution systems;
- (viii) Mechanical, electrical and plumbing, fire protection and life safety fixtures and fittings;
- (ix) Tenant improvement work in the Office/Retail Unit and Furniture, Fixtures and Equipment in the Hotel Unit;
- (x) Interior finishes, cabinetry, appliances for the individual units of the Residential Condominium;
- (xi) Special construction and finish items; and
- (xii) Finishes in the individual rooms or suites of the Hotel Unit.

2. Within ten (10) business days following written request therefor by either the BRA or Associates made at any time on or after the Completion Date, the parties shall take such steps as shall be necessary to create the Condominium by the recording of a master deed subjecting the Site and the Improvements to the provisions of M.G.L. c.183A. The Condominium shall consist of the Units, with common areas and facilities (which shall be all portions of the Site and the Improvements not specifically enumerated as part of any of the Units). There shall be attached to the Lease forms of master deed, the documents creating the organization of unit owners of the Condominium and such other documents as the parties shall agree as being generally sufficient to accomplish the foregoing. Said master deed shall

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THE DESIGN REVIEW PROCEDURE FOR
DEVELOPER'S ARCHITECTURAL SUBMISSIONS
TO THE
BOSTON REDEVELOPMENT AUTHORITY

JANUARY 1984

BOSTON REDEVELOPMENT AUTHORITY DESIGN REVIEW PROCEDURE

All development proposals submitted to the Boston Redevelopment Authority will be subject to design review and approval. Required submissions shall be made at four stages of project design and construction: Schematic Design, Design Development, Contract Documents, and Construction Inspection. Submissions shall include the materials described herein, except that for projects of limited size, scope and impact on their surroundings, certain of the required materials may be waived by the Authority. This determination will be made at the start of each stage of the Design Review Procedure.

In addition to the four-stage Design Review Procedure, other reviews at the request of either the developer or the Authority are encouraged. It is also expected that reasonable requests for progress prints and other materials in addition to these required herein will be met at any time.

Review of Stages 2, 3 and 4 will be limited to consideration of design refinements, new elements not present in previous submissions, and conformity with previously approved submissions.

DESCRIPTION OF SUBMISSION REQUIREMENTS

1. SCHEMATIC DESIGN

The intent of this review is to secure agreement on the basic design concept. The following materials are required:

- a. Written description of the project including all program elements and space allocation for each element.
- b. Site plan at an appropriate scale (e.g., 1" = 16' or 1" = 20') showing:
 1. General relationships of proposed and existing buildings and open space. Open spaces mutually defined by buildings on adjacent parcels and across streets shall be included.
 2. General location of walks, driveways, parking, services areas, roads, and major landscape features.
 3. Pedestrian and vehicular (including service) access and flow through the parcel and to adjacent areas.
 4. Survey information, such as existing elevations, benchmarks, utilities, etc.
 5. Current ownership (including purchase options) of all portions of the development site.
 6. Phasing possibilities, if any.
 7. Construction limits, if applicable.
- c. Schematic building plans showing ground floor and typical upper floor(s).
- d. Massing model at 1" = 100' for use in the Authority's downtown cityscape model.
- e. Shadow studies showing the effects of the proposed massing on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plazas.

Submission of site plan and massing options, as well as other sketches and diagrams which will help clarify design issues and the proposed solution is encouraged. After review and agreement on the program, site plan and massing, the following materials are required:

- f. Building and landscape plans, elevations in the context of the surrounding area, and sections showing organization of functions and spaces, all at an appropriate scale (e.g., 1" = 8'). These drawings shall describe architectural massing, facade design, and proposed materials.

- g. Site model at an appropriate scale (e.g., 1" = 16' or 1" = 20'). All nearby buildings and streets should be included to illustrate the relationship of proportions, materials and facade treatment to the surrounding buildings.
- h. Wind impact studies showing the effect of the project on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plaza's.
- i. Estimated construction schedule for the project.
- j. Proposed schedule for submission of Design Development materials.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

2. DESIGN DEVELOPMENT

The intent of this review is to secure agreement on the final design prior to detailed work on Contract Documents. The following materials are required:

- a. Written description of the project (including all program elements and space allocation for each element) and zoning calculations.
- b. Site plan at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN) showing:
 - 1. Relationship of proposed building and open space to existing adjacent buildings, open spaces, streets, and buildings and open spaces across streets.
 - 2. Proposed site improvements and amenities including paving, landscaping, lighting and street furniture.
 - 3. Building and site dimensions, including setbacks and other dimensions subject to zoning requirements.
 - 4. Any site improvements or areas proposed to be developed by some other party (including identification of responsible party).
 - 5. Proposed site grading, including typical existing and proposed grades at parcel lines.
- c. Site sections at an appropriate scale (e.g., 1" = 16' or as determined after approval of SCHEMATIC DESIGN).
- d. Building plans (including preliminary structural and mechanical drawings), sections and elevations at an appropriate scale (e.g., 1" = 8') developed from approved schematic design drawings. Elevations shall show the project in the context of the surrounding area as required by the Authority to illustrate relationships of character, scale and materials. All plans, sections and elevations

shall reflect the impact of proposed structural and mechanical systems on the appearance of exterior facades, interior public spaces, and roofscape.

- e. Large-scale (e.g., 3/4" = 1'-0") typical exterior wall sections, elevations and details sufficient to describe specific architectural components, methods of their assembly and character.
- f. Outline Specifications of all materials for site improvements, exterior facades, roofscape, and interior public spaces.
- g. Study model at an appropriate scale (e.g., 1" = 16', or as determined after approval of Schematic Design) showing refinements of facade design.
- h. Shadow studies and quantitative wind impact analysis at pedestrian levels showing the effect of the project on the surrounding area with particular attention to nearby public spaces including sidewalks, parks, and plaza's.
- i. Eye-level perspective drawings showing the project in the context of the surrounding area.
- j. Proposed schedule for submission of Contract Documents.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

3. CONTRACT DOCUMENTS

The intent of this review is to secure agreement on the detailed design of the proposal. The following materials are required:

- a. Written description of the project, (including all program elements and space allocation for each element) and zoning calculations.
- b. Site plan showing all site development and landscape details for lighting, paving, planting, street furniture, utilities, grading, drainage, access, service, and parking.
- c. Complete architectural and engineering Drawings and Specifications.
- d. Full-size assemblies (at the project site) of exterior materials and details of construction.
- e. Eye-level perspective drawings or presentation model that accurately represents the project, and a rendered site plan showing all adjacent existing and proposed structures, streets and site improvements.
- f. Site and building plan at 1" = 100' for Authority use in updating its 1" = 100' Photogrammetric Map Sheets.
- g. Construction schedule for the project.

During preparation of the Contract Documents, it is the developer's responsibility to notify the Authority, promptly and secure its approval of all changes from the approved Design Development Drawings that are contemplated for site improvements, exterior facades, roofscape and interior public spaces. Progress Drawings representing 50% completion of the Contract Documents may be required for review by the Authority.

Upon approval by the Authority of this CONTRACT DOCUMENTS, the following submissions are required:

4. CONSTRUCTION INSPECTION

- a. All Contract Addenda, Change Orders, and other modifications and revisions of approved Contract Documents which affect site improvements, exterior facades, roofscape, and interior public spaces.
- b. Shop drawings of architectural components which differ from, or were not fully described in Contract Documents.

Site visits will be conducted to insure construction of the project in accordance the approved Contract Documents.

ROWES WHARF
LEASE COMMENCEMENT AGREEMENT

Exhibit F - DEVELOPMENT PROGRAM

1. Areas by Program Components*

Total Commercial		287,000
Office	244,000	
General Retail	25,000	
Retail/Restaurant	18,000	
Total Residential		230,000
Condominiums	223,000	
Health Club	7,000	
Hotel		<u>148,000</u>
Total Program Area		665,000
Public Observatory		3,500
Ferry Terminal		<u>2,500</u>
Total, Above Grade		671,000
Total, Below Grade		305,000
(Parking, Service/Loading)		

*Note: Areas are approximate as represented in schematic design drawings; and are calculated using zoning area definition, except that the exterior wall of the buildings is deemed to be established as the interior plane of the glass line.

2. Development Program

Uses within Rowes Wharf are arranged in four separate buildings--Atlantic Avenue building, the North and Central Wharfs, and the Ferry Terminal--as follows:

1. Office: 244,000 sf in Floors 2-8 in Atlantic Avenue building; service, storage, etc. below grade
2. Hotel: 148,000 sf on Floors 2, 8-16 in Atlantic Avenue building; service, back-of-house, etc. below grade
Includes meeting rooms, service kitchens, and unit count as follows:

Single key suites	152
Double key suites	31 (can be rented separately when not used as suites)
Singles	<u>16</u>
Total units	199
Total keys	230

3. Residential Condominiums: 230,000 sf in Atlantic Avenue, Floors 11-16, and North and Central Wharfs; service, storage, etc. below grade.
 - Includes Health Club of approximately 7,000 sf, located on Level 8 of Atlantic Avenue building; access through hotel elevators.
 - Includes ground level townhouses in wharf buildings which can be sold for commercial (office/professional office) uses.
4. Retail: 43,000 sf in Atlantic Avenue building, Ground and Second Floor; in North Wharf, Ground floor along Rows Wharf and Northern Promenade; and in Central Wharf Ground Floor along Rows Walk.
 - Includes up to three restaurants, some of which may be affiliated with the hotel.
 - Retail program: Convenience stores and services for project users, such as tobacco shop, drug/sundries, food store/commissary, marine-related store, banks/ATM center, drycleaners.

Other uses and features include the following:

1. Enclosed Public Observation Area of 3,500 sf located at floor of dome (8th Level) adjacent to Health Club, including accessory food and beverage outlet. Access through Hotel elevators.
2. Below grade loading facility and garage for 575 cars; below grade volume includes area under easements (North and South) and Atlantic Avenue sidewalk, subject to P.I.C. approval.

3. Public Areas: Public access along project perimeter, Rowes Walk, through Great Court. Kiosks may be installed to activate public space. Restaurants may use sidewalk and open space areas for outdoor seating. Provisions will be made for proper security of public areas. Pedestrian connection to Broad Street and High Street under Central Artery.
4. Ferry Terminal: Initial phase facility of 2,500 sf in pavilion area, according to projected usage requirements; additional areas earmarked for expansion space if warranted by future traffic.
5. Marina: 50 slips, half of which are dedicated to transient usage; public dinghy dock.

Exhibit G

Arbitration of Design Review Impasse

In an effort to avoid prolonged and costly delays in agreement upon Design Materials for Design Development or Contract Documents, Associates and the BRA agree to the following procedure to assist in resolving Design Review Impasses arising in the Design Review Procedure.

The parties have agreed to a panel of three persons to which unresolved design issues as described in Paragraphs 7c and 7d will be submitted for advice. The panel shall consist of the deans of the following schools of architecture or their respective designees:

1. Harvard University School of Design;
2. Massachusetts Institute of Technology School of Architecture and Planning;
3. Boston Architectural Center.

The dean of the Harvard University School of Design shall serve as Chairman.

When either the BRA or Associates shall serve notice in accordance with said Paragraphs 7c or 7d of its intent to submit a Design Review Impasse to the foregoing panel, a copy of such notice shall be sent to each panel member. Such notice shall be accompanied by copies of all prior submissions of the Design Materials which are the subject of the Design Review Impasse and all notices of disapproval issued by the BRA in response thereto. Upon receipt of any such notice the Chairman of the panel shall, after consultation with the other panel members and the parties, select a date, time and place for a meeting of the full panel with Associates and the BRA, which date shall be no later than ten (10) business days following the date of the notice invoking the provisions of this exhibit.

At the meeting of the panel so scheduled, Associates and the BRA shall make such presentations and submit such Design Materials to the panel as they think necessary or desirable for the understanding of the Design Review Impasse in dispute. The panel may request the preparation of additional material including, without limitation, sketch designs, details, or samples or catalog cuts of materials. All such materials

requested by the panel shall be submitted by the party of whom such material is requested no later than three (3) business days following the date of the meeting with the panel.

No later than five (5) business days following the meeting among the panel, Associates and the BRA the panel shall issue a written decision suggesting a resolution of the Design Review Impasse in dispute, which resolution may be in favor of the position maintained by either the BRA or Associates or may be a compromise position promulgated by the panel. The decision of the panel shall be advisory to the BRA, which shall retain the ultimate right and obligation to approve Design Materials, but such decision shall be given great weight by the BRA in its consideration of Design Materials. If, notwithstanding the advice of such panel, the staff of the BRA is unwilling to recommend approval of Design Materials consistent with the decision of the panel, Associates shall have the right to request consideration by the Board of the BRA of the subject matter of the Design Review Impasse and the advice of the panel.

In exercising the responsibilities conferred upon the panel in the foregoing process, the panel shall be asked to take into account both (i) aesthetic considerations and (ii) development feasibility considerations such as cost, marketability, and construction complexity and duration.

EXHIBIT H

LICENSE AGREEMENT

LICENSE made this 4th day of November, 1983 by and between the Boston Redevelopment Authority, a public body, politic and corporate, created and existing pursuant to Chapter 121B of the Massachusetts General Laws (Ter. Ed.), as amended, the "Authority") and Rowes Wharf Limited Partnership (the "Licensee").

WHEREAS, the Licensee has been tentatively designated as the redeveloper of the Authority's development parcel known as Rowes and Fosters Wharves in the Downtown Waterfront Faneuil Hall Urban Renewal Project Area, being the premises shown on a plan entitled "Boston Redevelopment Authority, Waterfront Project, Rowes & Fosters Wharves Development Parcel A-1/D-6," Scale : 1" = 40' dated March, 1982 (the "Premises"); and

WHEREAS, the Premises are currently occupied by licensees and sublicensees of the Authority and occupants under various tenancies; and

WHEREAS, in furtherance of its development the Licensee desires to gain access to the Premises to accomplish investigations and observations to assist in environmental review of Licensee's development proposal and in further design thereof.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained, the Authority hereby authorizes and

permits the Licensee, its agents, employees, contractors and subcontractors, to enter upon the Premises to undertake such investigations and observations, including, without limitation, the following activities: test borings; site surveys; the digging and maintenance of observation wells; the taking of water and sediment samples; seawall and piling corings and examinations and the erection and maintenance of a sign announcing Licensee's development. The design of and the date of installation of any such sign shall be subject to the Authority's review and approval.

This License is subject to the following terms and conditions:

1. The rights conferred by this License shall commence on the date hereof and shall continue for so long as Licensee shall continue to be the tentatively or finally designated redeveloper of the Premises.

2. In the conduct of the activities authorized by this License, the Licensee shall adhere to provisions of all applicable codes, regulations and ordinances of the City of Boston and the Commonwealth of Massachusetts.

3. The Authority hereby agrees that it shall notify all persons having a right to occupy the Premises, or portions thereof, that this License has been granted and of the terms of

Paragraphs 3, 4 & 5 hereof, and that it shall take all legal steps necessary to cause any such persons to cooperate with Licensee in making areas designated by Licensee from time to time available for use and occupancy by Licensee upon forty-eight hours prior notice by Licensee to any such licensee, sublicensee or occupant. To assist the Authority in obtaining such cooperation, the Licensee shall provide to the Authority, simultaneously with the giving of notice to any such licensee, sublicensee or occupant, a sketch plan or drawing showing the portion or portions of the Premises to be occupied by Licensee in exercising the rights conferred hereunder and an estimate of the date Licensee shall commence occupancy thereof and the duration of such occupancy. Without limiting the obligation of the Authority to cause those persons having a right to occupy the Premises to cooperate with Licensee as herein provided, the Authority shall require that (i) any such person, other than a person operating a parking lot upon the Premises, may impose no fee or other charge for Licensee's occupancy of the Premises, and (ii) any person operating a parking lot upon the Premises may impose a fee or charge for such occupancy no greater than the maximum daily rate for all day parking charged by such person to the general public for each day, or portion thereof, of occupancy by Licensee times the number of parking spaces so occupied by Licensee.

4. The Licensee acknowledges that the parking uses in operation on the date hereof shall continue during the term of this License, subject to such temporary or partial interruption as may be necessary to enable Licensee to exercise the rights conferred hereunder. Licensee shall therefore suitably fence or otherwise barricade any test activities conducted on the Premises which, if not so protected, would pose a safety hazard to users of the balance of the Premises. Prior to the removal of any such fence or barricade, all boring holes, test pits, trenches or observation wells shall be filled and covered and the surface material thereon restored as near as may be to the condition which existed prior to such activities.

5. The Licensee acknowledges that the commuter boating uses in operation on the date hereof shall continue during the term of this License, subject to such temporary passenger access rerouting and docking location adjustments as may be necessary to enable Licensee to exercise the rights conferred hereunder. Licensee shall not intentionally cause any interruption in commuter boating service and shall exercise its rights hereunder so as to cause as little disruption as possible. Licensee shall therefore suitably fence or otherwise barricade any test activities conducted on the Premises which, if not so protected, would pose a safety hazard to users of the balance of the

Premises. Prior to the removal of any such fence or barricade, all boring holes, test pits, trenches or observation wells shall be filled and covered and the surface material thereon restored as near as may be to the condition which existed prior to such activities.

6. The Licensee agrees to pay, indemnify and save harmless the Authority from all suits, actions, claims, demands, damages or losses, expenses and/or costs of every kind and description to which the Authority may be subjected or put by reason of injury (including death) to persons or property resulting from, in connection with, or growing out of any act of commission or omission of the Licensee, its agents, servants, employees, visitors, guests or any person or corporation dealing with the Licensee in any way in the occupancy and the use of the Premises. The Authority shall give notice of any such suits, actions, claims, demands, damages, losses, expenses, or costs to the Licensee forthwith, and the Authority shall not object to the intervention of the Licensee in any suit arising out of such claims, demands, losses, expenses or costs.

7. The Licensee shall carry or require that there be carried Workmens' Compensation Insurance for all of its employees and those of its contractors and subcontractors engaged in work on the Premises, in accordance with applicable Workmens' Compensation laws.

The Licensee shall carry or require that there be carried General Public Liability Insurance with bodily injury limits of not less than \$1,000,000 for injury to or death of one person, and with such limits of not less than \$3,000,000 for injury to or death of more than one person, due to accidents which may occur or result from activities under this License. Such insurance shall cover the use of all equipment, hoists and motor vehicles on the site or hauling materials or debris from the site. The Licensee shall further carry Property Damage Insurance with limits of liability of not less than \$100,000 for each accident for accidents which might arise from activities under this License. The Authority shall be named as co-insured on all insurance required hereunder. The Licensee agrees to furnish to the Authority proof of such insurance prior to entering the Premises.

8. The Authority shall not be bound to reimburse the Licensee, its agents, employees, contractors and/or subcontractors for any funds expended on the work authorized hereunder.

9. The Licensee shall not permit, commit nor suffer waste or impairment of or to the Premises.

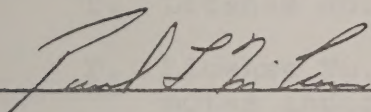
10. The Licensee shall, if the work herein permitted requires occupancy of a public street or alley, obtain the required permit from the City of Boston before proceeding with such work.

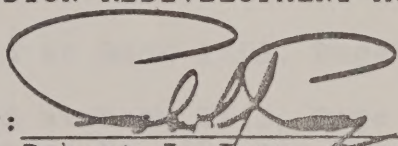
11. All rubbish and debris caused by the activities permitted herein shall be removed by the Licensee at its expense.

IN WITNESS WHEREOF on the 4th day of November, 1983 at Boston, Massachusetts, the parties hereto have caused this License in three counterparts to be signed, sealed and delivered by their duly authorized officers, respectively.

Signed, sealed and delivered in the presence of:

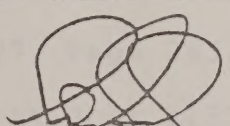
BOSTON REDEVELOPMENT AUTHORITY



By: 

Robert J. Ryan, Director

ROWES WHARF LIMITED PARTNERSHIP

By: 

EDWIN N. STOMAN
GENERAL PARTNER
FOR THE PARTNERSHIP BUT
WITHOUT PERSONAL RECOURSE
TO THE GENERAL PARTNERS

Approved as to form:

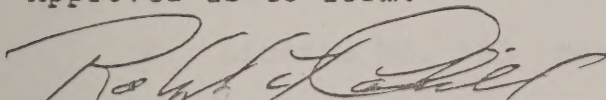

General Counsel *Robert J. Ryan*

EXHIBIT I

Existing Licenses for the Site

- A. License No. 504 recorded with Suffolk Registry of Deeds at Book 1477, Page 275. Note that License No. 504 is the same as License Nos. 277 and 423 which were void because they were not recorded in time.
- B. License No. 1132 recorded at Book 1913, Page 426.
- C. Licenses No. 1225 and 1225a recorded at Book 1919, Page 232.
- D. License No. 1227 recorded at Book 1921, Page 221.
- E. License No. 638 recorded at Book 1553, Page 49.
- F. License No. 404 recorded at Book 1443, Page 66. My notes indicate that License No. 404 has been revoked.
- G. License No. 266 recorded at Book 1268, Page 120.
- H. License No. 124, Page 1177, Page 243.
- I. License No. 170 recorded at Book 1185, Page 290.
- J. License No. 202 recorded at Book 1205, Page 8.
- K. License No. 533 recorded at Book 1499, Page 307.
- L. License No. 796 recorded at Book 1672, Page 468.
- M. License No. 1131 recorded at Book 1916, Page 568.